



USCA DOCKET # (IF KNOWN)

13-17449

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:	DISTRICT: NDCA	JUDGE: Phyllis J. Hamilton
CATHY RILEY v. DAVISON DESIGN & DEVELOPMENT, INC. et al.	DISTRICT COURT NUMBER: 11-2970 PJH (MEJ)	
	DATE NOTICE OF APPEAL FILED: December 13, 2013	IS THIS A CROSS APPEAL? <input checked="" type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): N/A	

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

Davison Design et al. seek a declaration that 115 commercial emails allegedly sent by them to Riley do not violate California's Business & Professions Code. They also seek a declaration that Riley's counter-claims to the contrary are preempted by the federal CAN-SPAM Act. Relying on Gordon v. Virtumundo, 575 F.3d 1040 (9th Cir. 2009), Judge Hamilton held that Riley's counter-claims were preempted by CAN-SPAM because she could not plead reliance or damages and could not establish any knowing and material misrepresentations.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:

1. Do the emails at issue violate Section 17529.5 of California's Business & Professions Code?
2. Are Riley's counter-claims preempted by the federal CAN-SPAM Act because there is no evidence of reliance or damages and she cannot allege a claim for fraud?
3. Are Riley's counter-claims preempted by the federal CAN-SPAM Act because she cannot demonstrate any knowing and material misrepresentations?

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):

N/A

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

- ☐ Possibility of Settlement
- ☐ Likelihood that intervening precedent will control outcome of appeal
- ☐ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify)

- ☐ Any other information relevant to the inclusion of this case in the Mediation Program

- ☐ Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input type="checkbox"/> FEDERAL QUESTION <input checked="" type="checkbox"/> DIVERSITY <input checked="" type="checkbox"/> OTHER (SPECIFY): <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">28 U.S.C. 2201 (Declaratory Judgment)</div>	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div> <input type="checkbox"/> OTHER (SPECIFY): <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div>	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input checked="" type="checkbox"/> SUMMARY JUDGMENT <input checked="" type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input type="checkbox"/> OTHER (SPECIFY): <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div>	<input checked="" type="checkbox"/> DAMAGES: SOUGHT \$ <div style="border: 1px solid black; width: 80px; height: 20px; display: inline-block;"></div> AWARDED \$ <div style="border: 1px solid black; width: 80px; height: 20px; display: inline-block;"></div> <input type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ <div style="border: 1px solid black; width: 80px; height: 20px; display: inline-block;"></div> AWARDED \$ <div style="border: 1px solid black; width: 80px; height: 20px; display: inline-block;"></div> <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ <div style="border: 1px solid black; width: 80px; height: 20px; display: inline-block;"></div>

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

Signature

12/13/2013

Date

COUNSEL WHO COMPLETED THIS FORM

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**THIS DOCUMENT SHOULD BE FILED IN DISTRICT COURT WITH THE NOTICE OF APPEAL. **

**IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS. **